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CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 13th February, 2020

No. 13/1/9708-HII(2)-2019/2621.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 45/2015, dated 12.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

CHHAVI PARKASH - EX-CONDUCTOR NO. 310, CHANDIGARH R/O HOUSE NO. 411, NEAR DERA SAHIB, MANIMAJRA, UNION TERRITORY, CHANDIGARH (Workman)

AND

1. TRANSPORT SECRETARY, CHANDIGARH ADMINISTRATION, CHANDIGARH.
2. DIVISIONAL MANAGER, CHANDIGARH TRANSPORT UNDERTAKING, UNION TERRITORY, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that as per the inquiry proceedings supplied to workman he was charge sheeted as per chargesheet on 27 counts on the allegations of irregularities committed by workman while the workman was posted as advance Booker at ISBT. The substance of the charge sheet is that he has not deposited complete dockets in the office on various dates, made cutting in the dockets, made double entry of tickets in the dockets and pocketed the sale proceeds on various dates. On the same allegation, FIR No. 102 dated 14.03.2007 under Section 420, 467, 468, 471 IPC and Section 13(i)(d) of Prevention of Corruption Act, 1998. The workman came to know about the allegations on 09.01.2013 first time when photostat record was supplied to him on his demand. The allegations are totally false and handiwork of Shri Zail Singh-Inspector with V.C. on the workman had been depositing the original documents and full sale proceeds of the tickets and after deposit of record it remained in the possession of Shri Zail Singh - Inspector. But original record was never placed on the inquiry file and not made available to the workman for inspection. The photostat documents has been placed on inquiry file first time on 23.04.2012 are totally and fabricated by Shri Zail Singh - Inspector and he is the person who have embezzled the amount and destroyed the original record, submitted by the workman

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and thereafter created fabricated photostat record in order to justify his illegal act and falsely implicate workman in this case. There is no explanation for not placing on file the original record. As per practice, without depositing earlier cash and dockets no fresh tickets box and dockets are issued to conductor. In this case there is no report regarding non-submitting of dockets in time and seeking of explanation for issuing fresh tickets and dockets to workman. Reports in this regard are stated to be made after lapse several days. The charge-sheet was never served upon the workman at any point of time and without serving the charge-sheet the Inquiry Officer was appointed. The Inquiry officer did not conducted the inquiry in fair and proper manner and no fair & proper opportunities were given to the workman to defend himself and submitted his inquiry report against workman on 27.04.2011, which is evident from the facts on recorded at page 14 of the second inquiry report that only photostat documents as relied in the charge-sheet were placed on inquiry file first time on 23.04.2012 after submission of inquiry report. The workman apprised the punishing authority about the factual position and after satisfying from the inquiry file the punishing authority came to the conclusion that no fair and proper inquiry was conducted and he ordered for fresh inquiry. Thereafter, fresh Inquiry Officer was appointed as per order dated 23.08.2011. The second Inquiry Officer was also biased against workman right from the beginning which is evident from the inquiry proceedings. In spite of repeated requests, original record was not summoned and proceeded with the inquiry proceedings in the absence of original record which act is illegal and against the law. The biasness of second Inquiry Officer is writ large from his conduct whereby he had commented about the conduct of workman during first inquiry in spite of fact that the proceedings before the first inquiry officer had been declared illegal by punishing authority while accepting the submission of the workman. The biasness of the Inquiry Officer is also reflected from his conduct by not recording the statement of PWs on the date fixed and adjourned the proceedings when they were not giving evidence on the line of their report which act of Inquiry Officer was illegal and against the law. Further when PWs statements were recorded on next date they were firstly handed over the copies of their report by highlighting relevant statements and then they were instructed to give the statement which were highlighted in the documents before recording their statement which is evident from the record. Due to these illegal acts the workman refused to sign the same but objection of the workman was not recorded for the reasons best known to the Inquiry Officer. The Inquiry Officer further committed illegality by proceeding *ex parte* against the workman. It is recorded by the Inquiry Officer that the workman had been delaying the proceedings whereas it is evident on record that only first time documents i.e. also photostat documents were placed on record by department on 23.04.2012 and copies were supplied to workman on 09.01.2013. Thereafter the workman had been appearing on each & every date except on 23.05.2013 and 31.05.2013 due to the death of relative of the workman which fact was brought to the notice of the Inquiry Officer. The workman could not appear on 23.05.2013 due to the death of his maternal aunt and the case was adjourned to 31.05.2013. On 31.05.2013 there was "Bhog" of his maternal aunt so he made a request to the Inquiry Officer and the Inquiry Officer assured that the inquiry proceedings shall be adjourned to next date and the workman shall be informed later on so on 31.05.2013 the workman attended the "Bhog" of his maternal aunt with an hope that the inquiry proceedings shall be adjourned for next date as assured by Inquiry Officer. In spite of these circumstances the Inquiry Officer proceeded *ex parte* against workman and recorded the statements of PWs' in the absence of workman and without giving any opportunity of cross-examination to workman and without giving any opportunity of cross-examination to workman and without giving opportunity to lead defense and submitted *ex parte* report, in spite of the fact that the workman had requested for adjournment of proceedings and the Inquiry Officer had assured that inquiry shall be adjourned to another date. Thereafter the workman contacted the Presenting Officer to enquire next date of the inquiry proceedings on 03.06.2013 and 10.06.2013 and he was told by the Presenting Officer that he shall be informed through letter regarding the next date of inquiry proceedings. Thereafter, the workman awaited for the intimation but when he did not receive any intimation he sent an application through registered letter on 29.07.2013 but same was received back as the Inquiry Officer refused to receive the same. The workman was shocked to know when he received the *ex parte* inquiry report. The workman submitted the detailed representation against the inquiry report but the punishing authority without considering the same, passed a punishment order dated 10.10.2013 whereby the workman was dismissed from service. Thereafter workman filed an appeal against the order of punishment order dated 10.10.2013, but same has also been dismissed by appellate authority as per order dated 19.12.2013/03.01.2014 without considering the pleas taken by the workman in his appeal, by passing a non-speaking order. No reasoning has been given for rejection of the grounds taken in appeal. On the same

sent of false allegations and false report of same person the department had also lodged FIR No.102 dated 14.03.2007 under Section 420, 467, 468, 471 IPC and Section 13(i)(d) of Prevention of Corruption Act, 1988 in which workman have been acquitted as per judgment dated 20.03.2015 passed by Mrs. Shalini Singh Nagpal - Special Court, Chandigarh. It is settled law that if an employee is acquitted by the court in FIR on same set of allegations, the departmental inquiry proceedings goes automatically. The inquiry proceedings, order of punishment dated 10.10.2013 and order of appellate authority dated 19.12.2013/03.01.2014 are illegal, arbitrary, against the rules and law, therefore, same deserves to be set-aside amongst others on the grounds that no charge-sheet was ever served upon the workman as it was mandatory as per Punjab Civil Services (Punishment & Appeal) Rules, 1970 that personal service of charge-sheet is mandatory and in the absence of the same whole proceedings stand vitiated. Original record upon which the entire allegations are based were never brought on record and in the absence of original record the entire proceedings stand vitiated. It is settled law that photostat documents are not admissible even in the departmental inquiry also. The charge-sheet is dated 07.11.2008 whereas documents relied upon in the charge-sheet were brought on record on 09.01.2013 i.e. also photostat after delay of about 4 years and in these circumstances the tampering with and fabrication of documents can not be ruled out. It is settled law that benefits of doubt always goes in favour of delinquent, even in departmental inquiry also. The Inquiry Officer acted with biased mind right from the beginning. The Inquiry Officer wrongly proceeded *ex parte* on 31.05.2013 in spite of the fact that it was brought to the notice of inquiry officer that "Bhog" of maternal aunt was fixed on 31.05.2013 and workman had made request in this respect for adjournment of inquiry proceedings. The whole proceedings against workman deserves to be set-aside as the workman was never made aware of *ex parte* order dated 31.05.2013 by the inquiry officer as well as by the Presenting officer inspite of repeated inquiry thereby depriving the workman to made a request for setting-aside the *ex parte* proceedings well in time. The Law Officer who had approved the charge-sheet and defends the charge-sheet in the court can not act as Inquiry Officer in departmental inquiry. The Inquiry Officer had not given any findings in support of his conclusion. The Inquiry Officer had not given any opportunity to give defence before submission of his report. Even in *ex parte* inquiry the opportunity to give defense has to be given to the delinquent. The punishing authority has not considered the representation of the workman as submitted by him before passing order of punishment and no reasoning have been given for rejection of defense pleas as taken in the representation. The order of punishing authority is non-speaking, therefore, illegal in the eyes of law. The Inquiry Officer as well as punishing authority has not taken into consideration the contradiction in the statement of witnesses as pointed out in the representation by the workman which demolished the entire story as stated in the charge-sheet. Order of the punishment is discriminatory as in similar set of circumstances the punishing authority imposed a punishment of stoppage of increment upon Kuldeep Singh-Conductor No.801 whereas workman has been dismissed from service. The workman had been acquitted by the court on the same set of allegations so department proceedings deserve to be withdrawn. In similar facts & circumstances order of punishment have been declared illegal by learned Presiding Officer, Labour Court in case of Sukhjinder Singh, C.No.514 after his acquittal in criminal case of same set of allegations while deciding IDR No. 270/2009 as per award dated 20.10.2014. The workman is unemployed after his illegal termination. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages along with interest @ 12% p.a. in the interest of justice.

3. The management contested the case of the workman and filed written statement that the workman was charge sheeted *vide* memo No. 11759/TA-1/HO/CTU/08 dated 07.11.2008 for grave misappropriation of ₹ 3,08,370/- from the Govt. revenue by way of selling fake tickets while he was posted as advance booking at I.S.B.T., Sector 17, Chandigarh. F.I.R. was lodged against the workman on the same counts *vide* FIR No. 102 dated 14.03.2007 under Section 420, 467, 468 & 471 of IPC and Section 13(i) (d) of the Prevention of Corruption Act, 1988 at Police Station, Sector 17, Chandigarh. The inspectors of the Chandigarh Transport Undertaking, scrutinized the record of the workman very carefully and minutely and it was found that the workman did not deposit the different dockets, in the office and some of the dockets were missing and there was so many discrepancies in the official record of the workman. Thereafter a detailed report was made against the workman which was submitted to the competent authority and after inquiry as per report of the inspectors, it was found that the workman had been performing the duty with a *mala fide* intention by corruption against the state ex-checker whereby he caused a grave misconduct and sold a number of fake tickets to the different conductors.

The documents which were proposed to be proved against the workman were duly attached with the charge sheet which were also summoned in the departmental proceedings and same were duly considered by the Inquiry Officer. There is no ground mentioned by the workmen that why the management office would create false and fabricated documents against him, whereas, the same were created in the capacity of Government office and the documents of Government offices are supposed to be right exact and genuine as well. It is a workman who could not disprove the same. No technical and rigid rules of law of evidence are applicable in the departmental proceedings. Even photocopy of the documentation can be proved against the charged official. The charge sheet was duly supplied to the workman but it is the workman, who did not participate in the departmental proceedings properly to pursue his case, rather he disappeared from the same with a *mala fide* intention only to save his skin and to take unnecessary bogus grounds, reasons and excuses in the litigation to take undue advantage and sympathy of court. The inquiry was also conducted by the Inquiry Officer after following the due procedure of law. It is the workman who tried to mislead and misguide the Inquiry Officer to distract the departmental proceedings from its right way. But the *mala fide* intention of the workman could not be gone. The technical rules of evidence act are applicable only in the civil proceedings in civil court, but neither in the departmental proceedings nor in this Court, being Labour and Industrial Tribunal. The photocopies of the documents are enough to prove against the workman. The documents mentioned in the charge sheet were placed on record first time on 23.04.2012. An order of fresh inquiry was passed by the competent authority only to meet the end of natural justice on the request of the workman as in the earlier inquiry also the workman disappeared intentionally from the departmental proceedings and the Inquiry Officer had no other option except to proceed the workman *ex parte*. The competent authority passed an order of fresh inquiry and what the workman did that he again disappeared from the inquiry proceedings which were being held on the second time and that also on request of the workman. Meaning thereby the act and conduct of the workman is very clear from the beginning that he did not want to participate in the departmental proceedings and to distract the same from its right way. The departmental inquiry on the second time was also conducted in a well and proper manner by adopting all the canon of natural justice, but as usual the workman did not participate in the departmental proceedings with a *mala fide* intention. The workman during the inquiry proceedings has made a number of unnecessary requests to the Inquiry Officer for the delay tactic and then also to meet the end of natural justice the mostly requests of the workman were accepted. But, it is the workman who did not want to get culminated the inquiry proceedings and was adopting delay tactic, but at last when the bad intention of the workman could not be gone then he again disappeared from the departmental proceedings, whereas it was sole duty of the workman to participate and pursue the departmental proceedings in a proper manner, which the workman has not done so. The inquiry was conducted in a well and proper manner after following the proper procedure and then the same were culminated. All the prosecution witnesses were examined in the departmental inquiry in presence of the workman and all the prosecution witnesses deposed as per version of the prosecution which were going against the workman. The Inquiry Officer did not commit any illegality at all by proceeding *ex parte* against the workman. The workman was proceeded *ex parte* as he did not come and participated the inquiry proceeds rather the workman disappeared intentionally from the inquiry proceedings so that the same be not culminated. Even the workman did not take a single step to get restore the *ex parte* inquiry proceedings neither before the Inquiry Officer nor before the punishing authority. All the documents and copy of charge sheet was duly supplied to the workman when the charge sheet was issued against him. No request was made to the Inquiry Officer for adjournment of the inquiry proceedings nor the Inquiry Officer had assured the workman for any adjournment. The prosecution witnesses were also not cross-examined by the workman himself as at the time of chief examination of the prosecution witnesses the workman was given an opportunity to cross-examine all the prosecution witnesses but it is the workman who showed intention to get recorded the evidence of the prosecution witnesses in piecemeal evidence. The Presenting Officer had no confabulation with the workman with regard to any adjournment in his inquiry proceedings. The representation submitted by the workman against the inquiry report was duly considered by the punishing authority and the punishment order was passed after following the due procedure of law. The appeal of the workman was also dismissed by the appellant authority in a just and equitable manners after considering all the facts of the case being devoid of merit. An FIR No. 102 dated 14.03.2007 under Section 420, 467, 468 & 471 of IPC and Section 13(i) (d) of the Prevention of Corruption Act, 1988 and the workman has been acquitted *vide* judgment dated 20.03.2015 passed by the learned Court of Ms. Shalini Singh Nagpal, Special Court, Union Territory Chandigarh. The

departmental proceedings are not bound by the criminal proceedings as nature of both are quite different. If any official is acquitted in the criminal proceedings then it does not mean that he will be exonerated in the departmental proceedings. Moreover, the judgment dated 20.03.2015 passed by the Ms. Shalini Singh Nagpal, Special Court, Union Territory Chandigarh has not attained its finality till now has the same has been assailed before the Hon'ble High Court by the Chandigarh Administration so the workman cannot rely upon the same. The workman has no *locus standi* to file the present statement of claim as he is himself at fault and it is well settled law that a person cannot take advantage of his own fault. All the departmental proceedings have been culminated in a well and proper manner after following the proper procedure of law. There is no lacuna in the same it is a workman who did not participate and pursue the same and the prosecution has duly established the charge against him, whereas, on the other side the workman could not prove his innocence. Rather, he adopted a delay tactic by putting un-reasonable unjust and unnecessary frequently applications to the Inquiry Officers and in his case the inquiry was conducted at two times and both the times he was at fault to ignore the same with a *mala fide* intention so he disappeared from the inquiry proceedings. The case of Shri Kuldeep Singh, C. No. 801 and Shri Sukhjinder Singh C.No. 514 has no relevancy at all with the case of the workman. Other averments of the case of the workman be dismissed and ultimately, it is prayed that the claim be dismissed.

4. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any? OPW
2. Relief.

5. In support of the case, the workman examined himself as AW1. Learned representative for the workers' union closed the evidence. On the other hand, the management relied upon the inquiry file of the workman.

6. I have heard learned representative for the workman and learned Law Officer for the management and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE NO . 1 :

7. In order to prove this issue learned representative for the workman has examined as AW1, who deposed that as per inquiry proceedings supplied to himself he was charge sheeted on 07.11.2007 on 27 counts charge on the allegation of irregularities and embezzlement committed by himself. The substance of charge sheet is that he had not deposited the complete tickets in the office on various dates and FIR No.102 dated 14.07.2007 under Section 420, 467, 468, 471 IPC and Section 13(1)(d) of Prevention of Corruption Act, 1998 in which he has been acquitted. Copy of judgment is Exhibit 'W1'. He further deposed that on 09.01.2013 he came to know allegations which was false and in fact Shri Zail Singh - Inspector was the person who embezzled the amount and destroyed the original record. The charge sheet was never served upon himself. The Inquiry Officer did not conduct the inquiry in fair & proper manner. Fresh Inquiry Officer was appointed as per dated 23.08.2011. The second Inquiry Officer was also biased against himself right from the beginning. The Inquiry Officer committed illegality by proceeding against *ex parte* against himself. He could not appear on 23.05.2013 due to death of his maternal aunty and on 31.05.2013 due to bhog of his maternal aunt. The Inquiry Officer proceeded *ex parte* against himself and recorded the statements of PWs in his absence and without giving any opportunity of cross-examination to him and without giving opportunity to lead defence and submitted *ex parte* report. He submitted the detailed representation against the inquiry report but was not considered by the punishing authority. He filed the appeal against the order of punishment order dated 10.10.2013 but the same has also been dismissed by the appellate authority. No reasoning has been given for rejection of ground of appeal. Copy of ground of appeal and order of the appellate authority is Exhibit 'W3' & 'W4'. He further deposed that on the same set of allegations, the management had also lodged FIR in which he was acquitted as per judgment dated 20.03.2015 passed by Ms. Shalini Singh Nagpal, Special Court, Chandigahr. In another similar facts & circumstances the order has been declared as illegal by learned Presiding Officer *vide* award dated 20.10.2014 and the same award has been challenged by way of writ petition which has been dismissed. Copy of award and order of Hon'ble Punjab & Haryana High Court is Exhibit 'W5' & 'W6'.

8. Learned representative for the workman has submitted the written arguments wherein it is submitted that the workman had joined the services on 24.05.1980 and has already acquitted the age of superannuation on 14.11.2017. On 07.11.2018 he was charge sheeted on 27 counts. Copies of alleged way bills and dockets for the period 06.07.2005 to 17.11.2006 were alleged to be fabricated by the workman were never supplied to him. It is further submitted that the workman has been acquitted *vide* judgement dated 20.03.2015. Copy of which is Exhibit 'W1'. The workman could not attend the departmental proceedings due to death of maternal aunt on 23.05.2013 and her bhog on 31.05.2013. The workman was supplied copy of inquiry report on 29.07.2013 and reminder on 21.08.2013. Then the workman submitted his representation which was not considered by the punishing authority. The inquiry report is illegal. The inquiry proceedings are illegal and conducted against the rules and law and principles of natural justice. Reliance is placed on citation **Geeta Ram Versus Presiding Officer, Labour Court, Bathinda, 1998(2) RSJ 526 (P&H); Kalam Singh Versus State of Haryana & Others, 2016(1) SCT 397 (P&H); Food Corporation of India & Another Versus Kulvinder Singh (since deceased) through his LRs, 2018(3) SCT 751 (P&H); 1994(6) SLR 183; 2009(2) SCC 570 and Anil Kumar Versus Presiding Officer & Others, 1985(3) SCC 378**. It is further submitted that on the same set of facts the workman has been acquitted by holding that there is no evidence *qua* alleged waybills and tickets were ever issued to the workman though many Advance Booking Clerks and Conductors used to work at the same time on different counters. Reliance is placed on citation **S. Bhaskar Reddy & Another Versus Superintendent of Police & Another, 2015(1) SCT 91 (SC); Punjab State through its Collector & Another Versus Ex.Constable Gulzar Singh, 2012(3) SCT 579 (P&H) and Sujinder Singh Versus Punjab State Power Corporation Limited & Others, 2018(4) SCT 462 (P&H)**. He further argued that at the time of order of dismissal the workman had completed 33 years of service so he had acquired right for full pensionary benefits. Depriving the workman of his right of pensionary benefits is excessive punishment. This Court is empowered under Section 11-A of the ID Act to give appropriate relief in case of discharge or dismissal of the workman and relied upon citation **Punjab National Bank, Kurukshetra Versus Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Another, 2007(7) SCT 372 (P&H)(DB)**.

9. On the other hand, learned Law Officer for the management relied upon the inquiry file and submitted written arguments stating that the Inspectors of the Chandigarh Transport Undertaking scrutinised the record of the workman and found that the workman did not deposit the some dockets which caused gross mis-conduct. The inquiry was conducted and was decided against him *ex parte*. The allegations alleged by learned representative for the workman is base-less. The workman had never asked to provide the complete charge sheet at the relevant time. Further the workman has been acquitted nowhere denied but the appeal is pending with the Hon'ble Punjab & Haryana High Court. Hence, the principles of natural justice have been observed. He prayed for dismissal of the present industrial dispute.

10. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was working as Conductor and as per inquiry file, the Inspectors of the Chandigarh Transport Undertaking scrutinised the record of the workman carefully and found that the workman did not deposit the dockets and there were so many discrepancies in the official record of the workman and detailed report was made against the workman which was submitted to the competent authority and as per inquiry file, as per report of the Inspectors it was found that the workman had performed his duties with *mala fide* intention by corruption against the state exchequer whereby the workman had caused gross misconduct and sold number of fake tickets to the different Conductors. The detail report was duly incorporated in the charge sheet. Thereafter the departmental inquiry was conducted against the workman which was decided *ex parte* on 29.07.2013. During the personal hearing the workman made a representation before the competent authority to give one more opportunity to defend his case and he was afforded one more opportunity to defend his case. But again the inquiry was decided against *ex parte* as he again failed to appear before the Inquiry Officer so arguments addressed by learned representative for the workman that the way bill will / dockets for the period 06.07.2006 to 17.11.2006 were never supplied to the workman along with charge sheet and never brought on record and proved on record does not inspire the confidence as no doubt as per Section 11-A of the ID Act can sit a Court

of appeal and revised the findings of the facts recorded in the domestic inquiry but as per provisions of this Section, the Labour Court shall rely only on the material on record and shall not take any fresh evidence in relation to the matter. Moreover, the workman has never argued before the Inquiry Officer for supply of record. Further allegation alleged by learned representative for the workman that he has been supplied incomplete charge sheet also did not inspire the confidence as when incomplete charge was given to the workman then he must raise the issue before the Inquiry Officer and request him to supply the same at the stage of preliminary inquiry itself but not at the later stage. Further admittedly it is a matter of record that the workman has been acquitted by the learned Court in FIR No.102 dated 14.03.2007 under Section 420, 467, 468 & 471 of IPC was registered with police station but the same was challenged by the Union Territory Administration before the Hon'ble Punjab & Haryana High Court. As per assertion of the management the workman was never informed about death and Bhog of his maternal aunt to the Inquiry Officer. Meaning thereby he remained absent on 31.05.2013 so entire evidence and as per inquiry file I find that the punishing authority passed the detailed order after giving opportunity to the workman and considering all the facts & representations and observed the principles of natural justice. Law is well settled in citation **State Bank of Bikaner & Jaipur Versus Nemi Chand Nalwya, 2011 LLR 634 (SC)** wherein the Hon'ble Supreme Court was pleased to hold as under :—

"6. It is now well-settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. Courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations."

In the light of authority, the Labour Court can interfere only if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, *mala fide* or based on extraneous considerations but there is no such occasion in the present case as fair and proper opportunity has been granted to the workman. Authorities relied upon by learned representative for the workman are not applicable to the facts & circumstances of the present case being distinguishable.

11. In the light of discussion made above, the workman had failed to prove that his services were terminated illegally by the management. Accordingly, this issue is decided against the workman and in favour of the management.

RELIEF :

12. In the light of findings on the issue above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 12.12.2019.

(Sd.) . . . ,
(ANSHUL BERRY),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 13th February, 2020

No. 13/1/9710-HII(2)-2019/2624.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 46/2015, dated 17.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

SAROJ W/O SHER PAL, R/O 4376, MALOYA, UNION TERRITORY, CHANDIGARH (Workman)

AND

1. SOCIAL WELFARE DEPARTMENT, CHANDIGARH ADMINISTRATION, UNION TERRITORY, CHANDIGARH THROUGH ITS DIRECTOR.

2. DIRECTOR, SOCIAL WELFARE DEPARTMENT, CHANDIGARH ADMINISTRATION, UNION TERRITORY, CHANDIGARH (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that she was duly selected and appointed as Anganwadi Helper as per appointment letter dated 02.02.1999 and since then she was working continuously without any break till her illegal termination. The workman was posted at Centre No.4, Maloya Village. On 01.08.2014 the daughter of workman was attacked and bruently injured in the premises of centre who was hospitalized due to injury. The daughter of workman remained under treatment upto till date. Since there was no one to look after the injured daughter of workman so she could not perform her duty. This fact was in the knowledge of the staff and the workman had also brought this fact to the knowledge of higher official also. Incident was published in newspaper also. The services of workman were illegally terminated as per order dated 29.09.2014 without any inquiry and without any misconduct on her part. Order of termination of workman is illegal and in violation of Section 25F of the ID Act. The services of workman were terminated on account of misconduct without any inquiry and charge-sheet. The allegation of absence is illegal as absence was not intentional or wilful but due to the reasons as stated above so order of termination is illegal. Many juniors to the workman were still in service whereas services of workman have been terminated so action of the management is illegal and in violation of Section 25-G of the ID Act. The workman made several requests to the management to reinstate him in service but all in vain. The workman is un-employed after her illegal termination. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages alongwith interest @12% p.a. in the interest of justice.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the Anganwadi Helpers are honorary, part time and voluntary workers and they are not Government servants. Their posts are created under a scheme and Anganwadi Workers/Helpers do not carry out any function of the State. No recruitment rules are followed in their appointment. The workman has disclosed her residential address at House No. 4376, Maloya, Chandigarh in her case whereas she is still residing in Anganwadi Building No. 3, Maloya Colony. From time to time she was asked to vacate the anganwadi building but he had not vacated the same whereas she had given in writing on 09.09.2014 that she will vacate the anganwadi building upto 13.09.2014. On merits, it is pleaded that the workman was appointed on leave vacancy as Honorary and part time Anganwadi Helper on 02.02.1999 for which she joined her duty on 03.02.1999 and her honorary services were extended upto 30.08.1999. Thereafter she was again appointed

as Honourary and part time Anganwadi Helper against vacant post on 22.09.1999 at C.No.4, Maloya Village and was terminated as Honourary and part time Anganwadi Helper with effect from 29.09.2014. During this period she had availed 314 days without honourarium leave as she was in habit of remaining absent from the anganwadi centre and for her habitual absenteeism explanations had been called for so many times. Facts of the news which have been published in the newspaper 'Punjab Kesri' (Hindi) on 26.09.2014 are not correct whereas news were published in the newspaper Dainik Bhaskar (Hindi) on 30.08.2014 under the title "*Parson Se Marpeet Ke Bad Gungi Hone Ka Drama Kar Rahi Thi 19 Saal Ki Larki*". The workman was habitual absentee from her duty and warned many times to be careful in future but she had not bothered about it. As per terms & conditions of the appointment letter dated 22.09.1999, she will be removed from the honourary service after giving 15 days notice. She was absent from her honourary duty with effect from 17.08.2014 and after that she was terminated from the honourary service on 29.09.2014. No charge sheet was served upon the workman as she was not Government employee. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of her case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
2. Relief.

5. In support of the case, the workman examined herself as AW1. The workman also examined her daughter Ms.Pooja as AW2. Learned representative for the workman closed the evidence. On the other hand, the management examined Ms. Usha Kiran—Child Development Project Officer as MW1 and Smt. Jaswant Kaur—Junior Assistant as MW2. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows :—

ISSUE No. 1 :

7. Onus to prove this issue was on the workman and to discharge the same learned representative for the workman has examined the workman as AW1, who deposed that she was duly selected and appointed as Anganwadi and posted at Centre No.4, Village Maloya, Chandigarh as per appointment dated 02.02.1999 and since then she has been working continuously without any break. On 01.08.2014 her daughter was attacked and bluntly injured in the premises of centre and she is still under treatment from 01.08.2014. Initially she was taking treatment from GMCH, Sector 16, Chandigarh and thereafter referred to PGI, Chandigarh. Incident was published in the newspaper also. Her services were terminated illegally *vide* order date 29.09.2014 without any inquiry and without any mis-conduct on her part. She further deposed that allegations of absence are illegal as the same was not intentional or wilful. She made several requests to the management to reinstate her but the management failed to reinstate her.

8. The workman also examined her daughter Ms. Pooja as AW2, who deposed that her mother was working in Anganwadi as a Helper since 02.02.1999 and she & her mother are residing in the same Anganwadi Center. On 01.08.2014 she was attacked by the co-worker namely Soma due to which she hospitalised and is still under treatment. Her mother was illegally terminated from her services *vide* order dated 29.09.2014 without any inquiry and without any conduct on her part.

9. Learned representative for the workman has argued that the workman worked with the management from 02.02.1999 till 29.09.2014 when her services terminated illegally by the management. Before terminating her services, no notice was served, no inquiry was held and no retrenchment compensation was paid. Juniors to the workman were retained in service so termination of her services is in violation of provisions of Section 25-F & 25-H of the ID Act. He referred to cross-examination of AW1 and AW2 by the management. He prayed for reinstatement of the workman with continuity of service and full back wages.

10. On the other hand, learned representative for the management examined Smt. Usha Kiran, who deposed that she is working as Child Development Project Officer and is authorised to tender into evidence *vide* Memo dated 26.09.2019 Exhibit 'W1'. The management is not an 'industry' within the meaning of the ID Act in view of nature and functions being performed under ICDS scheme. Anganwadi Worker/Helpers are purely temporary & part time worker working on consolidated honourarium and they did not held any civil post. She further deposed that the workman was offered appointment as Anganwadi Helper at Anganwadi Centre, Maloya Colony against the leave vacancy of Mrs. Bablesh Devi working as Anganwari Helper at honourarium of ₹ 260/- per month on purely temporary and part time basis *vide* memo dated 02.02.1999 Exhibit 'M2'. Her appointment was rather extended upto 30.08.1999 *vide* letter dated 09.03.1999 as Mrs. Bablesh Devi got extended her leave upto 30.08.1999. Thereafter Mrs. Bablesh resigned from her services with effect from 01.09.1999. Again *vide* letter dated 22.09.1999 Exhibit 'M3' the workman was offered appointment as Honourary Anganwadi Helper on purely temporary & part time basis but the work & conduct of the workman was not satisfactory. She was issued many warnings for absence from duty and negligence in performance her duty. Notice Exhibit 'M4' to 'M11' given on different dates. She further deposed that the workman and her daughter had an altercation with the fellow resident nearby Anganwari centre and a news was published in the newspaper in which the workman and her daughter defamed the department on the pretext that her daughter has lost her voice but when the Doctors from GMSH-16 examined and told that an operation would be performed then daughter of the workman started screaming 'mummy'. The story published in the newspaper is Exhibit 'M12' suggests that a DDR of the incident was recorded by the police official. She further deposed that despite repeated warning the workman again absented from duty without leave with effect from 17.08.2014. *Vide* letter dated 19.09.2014 Exhibit 'M13' the workman was directed to join duty immediately and explain reasons of absence within three days. Neither the workman had joined the duty nor offered any explanation. The services of the workman were terminated *vide* order dated 30.09.2014 which is Exhibit 'M14'.

11. Learned representative for the management also examined Smt. Jaswant Kaur—Junior Assistant as MW2, who identify the signature of the then CDPO on Exhibit 'M4' at point 'A', on Exhibit 'M5' at point 'B', on Exhibit 'M6' at point 'C', on Exhibit 'M8' at point 'D', on Exhibit 'M9' at point 'E', on Exhibit 'M10' at point 'F' and on Exhibit 'M11' at point 'G'.

12. Learned representative for the management has argued that the services of the workman are honorary, part time and voluntary and she is not Government servant and does not fall the purview of the ID Act and relied upon authority **State of Karnataka & Others Versus Ameerbi & Others, (2007)11 SCC 681**. He argued that work & conduct of the workman was not satisfactory. She was habitual absentee and warned many times to be careful in future. She remained absent from duty with effect from 17.08.2014 and she was directed to join duty *vide* Exhibit 'M13' but neither she joined her duty nor offered any explanation. Her services were terminated *vide* order dated 30.09.2014 Exhibit 'M14'. He prayed for dismissal of the present industrial dispute.

13. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was posted at Anganwari Centre as Anganwari Helper. It is also admitted case of the parties that she was terminated on 30.09.2014. Only allegation levelled by learned representative for the workman that there was sufficient ground of absence from duties. On the other hand, learned representative for the management placed letters / memos issued to the workman Exhibit 'M4' dated 16.09.2005, Exhibit 'W5' dated 14.06.2010, Exhibit 'M6' dated 04.11.2010, Exhibit 'W7' dated 29.12.2011, Exhibit 'M8' dated 14.05.2012, Exhibit 'M9' dated 14.05.2012, Exhibit 'M10' dated 15.05.2012, Exhibit 'M11' dated 01.06.2012 and Exhibit 'M13' dated 19.09.2014. *Vide* Exhibit 'M13' she was directed to join immediately and no reply has been filed by the workman. Ultimately, she was terminated on 30.09.2014. Hence, proper procedure has been followed by the management and the workman was directed to join duty immediately and her explanation was sought. Further admittedly the workman was Honourary Anganwadi Worker/Helper employed purely on part time basis as it is crystal clear from Exhibit 'M2' & 'M3' copy of the appointment as Honourary Anganwadi. Law is well settled in citation **State of Karnataka & Others Versus Ameerbi & Others, (2007) 11 SCC 681** in which it was held by the Hon'ble Supreme Court of India that the Anganwari workers do not hold civil

post and their post is created under a scheme and do not carry on any function of the State. No recruitment rules are followed in their appointment. In the light of discussion made above, the workman has failed to prove that her services were illegally terminated by the management. Accordingly, this issue is decided against the workman and in favour of the management.

RELIEF :

14. In the light of findings on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

The 17.12.2019.

(Sd.),
(ANSHUL BERRY),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION**LABOUR DEPARTMENT****Notification**

The 13th February, 2020

No. 13/1/9709-HII(2)-2019/2618.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 67/2015, dated 14.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

GITA DEVI, W/O SHRI VIJAY KUMAR, HOUSE NO. 465-B, SECTOR 33-A, UNION TERRITORY, CHANDIGARH (Workman)

AND

1. DIRECTOR, INDUSTRIAL TRAINING DEPARTMENT, 30 BAYS BUILDING, UNION TERRITORY, CHANDIGARH

2. SAFE GUARDS SECURITY SERVICE (REGD.), SCO NO. 25, IIND FLOOR, SWASTIK VIHAR, SECTOR 5, MDC PANCHKULA THROUGH ITS MANAGER (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in nutshell is that she was duly selected and appointed by management No.1 as Sweeper against vacant post along with three more Sweeper on 01.07.2012. Later on the workman was shown to be appointed through M/s Secodia Security Service and subsequently shown as appointed through management No.2 but she was throughout working under the supervision & control of employee of management No.1. Her services were illegally terminated with effect from 06.07.2015 in violation of provisions of Section 25-F, 25-G & 25-H of the ID Act.

3. Management No.1 contested the case of the workman and filed written statement that the workman was the employee of M/s Secodia Security Services i.e. the service provider and later on the workman was employed by M/s Safe Guard Security Service, management No. 2. The services of the workman were never terminated by the answering management.

4. Management No.2 contested the case of the workman and filed written statement that the workman was on contract. Her job was to clean and sweeping of floors and glasses which she was unable to perform and excused that it is difficult for lady to stand on high areas to management No.1 decided to keep a male member and ordered has been followed by the answering management.

5. The workman filed replication reiterating the averments of her case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed:-

1. Whether there is no relationship of employer & employee between management No.1 & workman ? OPM
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW
3. Relief.

6. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, management No.1 examined Shri Balbir Singh - Superintendent as MW1. Learned representative for management No.1 closed the evidence.

7. During the pendency of the present industrial dispute, the parties settled their dispute amicably. The workman made the following statement :—

"I am ready to join duty with Town & Country Planning, Sector 18 as Sweeper. I am also ready to take Rs.10,000/- as back wages. The reference be dismiss as withdrawn."

Shri Suneet Singla - Managing Director of management No. 2 made the following statement:-

"We are ready to give job to Geeta Devi as Sweeper and hand over Rs.10,000/- to Geeta Devi in Lok Adalat."

Accordingly, the present industrial is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

Sd.) . . . ,

(ANSHUL BERRY),

The 14.12.2019

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 13th February, 2020

No. 13/1/9711-HII(2)-2019/2633.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 10/2018, dated 14.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

ARUN TAYAGI, HOUSE NO. 744, VILLAGE BURAIL, SECTOR 45-B, CHANDIGARH
(Workman)

AND

BAKSHI HOUSEKEEPING MANAGEMENT, HOUSE NO. 1480, PUSHPAK SOCIETY, SECTOR 49-B, CHANDIGARH THROUGH ITS PROPRIETOR (Management).

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he was appointed by the management as Driver on 01.05.2014 and he remained in uninterrupted employment of the management upto 27.07.2017 when his services were illegally & wrongly terminated by refusing work. He was drawing ₹ 13,500/- as consolidated wages after deduction of ESI and provident fund contribution. Refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. No charge sheet was issued, no inquiry was held and no retrenchment compensation was paid at the time of termination. Juniors to the workman were retained in service. The management has violated provisions of Section 25-F & 25-G of the ID Act. Termination of the workman is illegal, wrong, motivated, against the principles of natural justice and unfair labour practice. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages.

3. The management contested the case of the workman and filed written statement that the services of the workman were terminated by the management *vide* letter dated 25.07.2017 due to his misconduct and misbehaviour with one Gurjeet Singh - Security Guard to whom he slapped publically and the said Gurjeet Singh also filed a complaint against the workman. After termination of the services of the workman, the management paid him salary upto September 2017 and had already cleared the arrears of salary as well as provident fund of the workman including two months advance salary. Nothing is due against the management. Moreover, the school authorities issued directions to the management *vide* letter dated 26.06.2017 in which it has been specifically mentioned to reduce the quantity of Drivers as well as Conductors upto 10 persons each category. The answering management had already left the contract with the school authorities in the month of December 2017 and new agency has taken over the charge. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in the written statement. From the pleadings of the parties, following issues were framed by my learned Predecessor :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

5. During the pendency of the present industrial dispute, learned representative for the workman made the following statement :—

"I may kindly be allowed to withdraw the present case with liberty to file a fresh."

As such, the present industrial dispute is disposed off being not pressed. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . .,

(ANSHUL BERRY),

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

The 14.12.2019

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 17th January, 2020

No. 13/1/9702-HII(2)-2020/1090.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 65/2016, dated 12.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

GURPREET SINGH, S/O SHRI GURMIT SINGH, R/O HOUSE NO. 3352, GROUND FLOOR, SECTOR 47-D, CHANDIGARH. (Workman)

AND

1. RYAN INTERNATIONAL SCHOOL, SECTOR 49-B, CHANDIGARH, CHANDIGARH THROUGH ITS PRINCIPAL.

2. A.K. BAKASHI-CONTRACTOR, C/O PRINCIPAL, M/S RYAN INTERNATIONAL SCHOOL, SECTOR 49-B, CHANDIGARH THROUGH ITS MANAGING DIRECTOR/DIRECTORS/PROPRIETOR/PARTNER. (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that management No.1 is principal employer where the workman worked as Vehicle Driver (Bus) and management No.2 is the contractor who supplies the manpower to management No.1. The workman joined management No.1 on 04.01.2018 as Vehicle Driver when a previous contractor was running the contractor-ship in the school for supplying of manpower. In the month of March 2014 previous contractor resigned / terminated from the contractor-ship and since then the workman along with his co-employees were working directly with the principal employer i.e. management No.1 as was asked by the Principal herself to continue with the service in the same capacity with the school. Management No. 2 was engaged by the school administration on 23.05.2014. Last drawn wages of the workman was ₹ 8,200/- per month when his services were illegally terminated by the management. The workman was General Secretary of the Ryan International School Employee Union functioning in the school of management No. 1. Being the General Secretary of the union, the workman was victimized by the school management and he was pressurized to withdrawn from the General Secretary post of the union and to work against the union. On 23.07.2015 the State Transport Authority, Union Territory Chandigarh had conducted a raid in the school for checking the school buses after getting the news published in the newspapers. At the time of conducting the raid by the State Transport Authority unfortunately the workman was present there. The State Transport Authority Staff asked about the buses and the workman told that the buses are in the parking and can be checked. After checking the management doubted that the State Transport Authority was called by the workman. The workman was told by the management that he should not drive the bus from today i.e. 24.07.2015. After the refusal of the driving the school bus, the workman made a complaint on 02.08.2015 to the Labour Inspector, Chandigarh but the management refused to take the workman back on duty and also told that his services are no longer required. Action of the management to terminate the services of the workman is illegal, unjustified and in violation of the law. Prior to termination of services of the workman the management had not issued him any charge sheet, notice and had not conducted any inquiry or paid any compensation. Junior to the workman were retained in service and fresh hands were recruited in service. The workman remained in the continuous and uninterrupted service of the management from 04.01.2008 to 19.08.2015. The workman had worked for more than 240 days of the service with the management within 12 months of preceding his date of termination.

Job of driving the vehicles of the school is of perennial in nature. The workman could not find any job after termination of his services despite his best efforts to search the job. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages.

3. Upon notice, none appeared on behalf of management No. 1 despite service as such management No. 1 was proceeded against *ex parte*. Management No. 2 appeared through its authorised representative but later on none appeared on behalf of management No. 2 so management No. 2 was also proceeded against *ex parte*.

4. In *ex parte* evidence, the workman examined himself as AW1. Learned representative for the workman closed the *ex parte* evidence.

5. I have heard the learned representative for the workman and have gone through the file carefully. In support of the case, learned representative for the workman has examined the workman as AW1, who deposed that he joined management No.1 on 04.01.2008 as Vehicle Driver when a previous contractor was running the contractor-ship in the school for supplying the manpower. He further deposed that in the month of March 2014 previous contractor resigned from the contractor-ship and since then he along with his co-employees was working directly under management No.1. Management No.2 was engaged by the school management on 23.05.2014. Last drawn wages of the workman was ₹ 8,200/- per month when his services were terminated illegally by the management. He further argued that he was General Secretary of the Rayan International School Employees' Union and being the General Secretary of the Union he was victimised by the school management. On 23.07.2015 the State Transport Authority, Union Territory Chandigarh raided the school for checking of school buses. After the checking management doubted that the State Transport Authority was called by him. In fact the State Transport Authority had come to the school after reading the news published in the newspaper. Thereafter on the next day he was told by the management that he should not drive the bus from today i.e. 24.07.2015. He further deposed that prior to termination of his services, the management did not issue any charge sheet or notice and conducted any inquiry or paid any compensation. He remained in the continuous and un-interrupted service of the management from 04.01.2008 to 19.08.2015 i.e. for seven years and had worked for more than 240 days within twelve months preceding his date of termination.

6. Learned representative for the workman has argued that he worked with management No.1 through management No.2 earlier as Vehicle Driver of school bus later on he was refused to join the duties after 24.07.2015 with wrong impression that he had called the State Transport Authority to check the school buses. He being the General Secretary of the union was victimised by the school management and was pressurised to withdraw from the General Secretary post so termination of service of the workman is null & void. He prayed for reinstatement of the workman with continuity of service and back wages.

7. After giving my careful consideration to the submissions of learned representative for the workman, I find that the workman is alleging himself the Bus Driver of management No.1. Learned representative for the workman has proved on record Exhibit 'W1/1' copy of information sought under the Right to Information Act, Exhibit 'W1/2' copy of complaint dated 24.07.2015 by the workers' union against the Principal of the school, Exhibit 'W1/3' copy of complaint dated 02.08.2015 by the workers' union against the Principal of the school, Exhibit 'W1/4' letter dated 03.08.2015 regarding complaint received from Shri Sohan Singh and Shri Gurpreet Singh (workman) regarding refusal of work; Exhibit 'W1/5' is noting dated 29.08.2015 of the Labour Department, Union Territory Chandigarh with regard to complaint against the Principal, Rayan International School; Exhibit 'W1/6' copy of demand notice filed by the workman under Section 2-A of the ID Act. But learned representative for the workman has not placed and proved on record any single document that the workman was working with management No.1 through management No.2. He himself is admitting all these facts that he was engaged by management No.2 contractor with management No.1. No appointment letter, no salary slip, no attendance register has been produced on record through which it can be ascertain that he actually worked with management No.1 as Bus Driver. Moreover, the workman is himself alleging that he was working with principal employer i.e. management No.1 but no *iota* of evidence has been placed on record that he was directly working with management No.1. Hence employer-employee relationship between the workman and management No.1 has not been proved by the workman. No doubt the management is *ex parte* but it is for the workman to prove his case by standing on his own legs. Since the workman has failed to prove relationship of employer-

employee between management No.1 and workman so question of terminating the services of the workman by management No.1 does not arise. Hence, no ground is made out to allow the present industrial dispute. Accordingly, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(ANSHUL BERRY),

The 12.12.2019

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 17th January, 2020

No. 13/1/9065-HII(2)-2020/1087.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 98/2011, dated 25.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

GAJINDER SINGH, R/O House No. 512, Phase-II, RAMDARBAR, INDUSTRIAL AREA, CHANDIGARH. (Workman)

AND

FIRST FLIGHT COURIERS LIMITED, 406-A, INDUSTRIAL AREA, PHASE-II, CHANDIGARH. (Management)

AWARD

1. Below mentioned Reference bearing Endorsement No. 13/1/9065-HII(2)-2011/7167, dated 21.04.2011 received from the Secretary Labour, Chandigarh Administration is being disposed of :—

"Whether the services of Gajinder Singh, H.No. 512, Phase-II, Ram Darbar, Chandigarh were terminated illegally by M/s First Flight Couriers Limited, 406-A, Industrial Area, Phase-II, Chandigarh; if so, to what effect and to what relief he is entitled to, if any?"

2. Shri Gajinder Singh (hereinafter called 'workman') had served demand notice dated 31.12.2010 upon M/s First Flight Couriers Limited (hereinafter called 'management') under Section 2-A of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act'). Upon notice, the workman appeared in person. Claim statement was filed. Case of the workman in brief is that he was appointed by the management on 19.05.2003 as Messenger and remained in uninterrupted employment upto 15.11.2010 when his services were illegally & wrongly terminated *vide* letter No. 245 dated 15.11.2010. There is no complaint against his work & conduct from his superior & colleagues. He was drawing ₹ 4,322/- per month as wages. Due to some domestic affair, he applied for two days leave i.e. for 25.06.2010 and 26.06.2010 and as per prevailing practice he handed over the leave application to his immediate authority/supervisor on 21.06.2010. The approving authority without any remarks of not sanctioned kept the leave application with him which *inter alia* means leave sanctioned. As the workman was informed for alleged refusal he proceeded on leave and joined his job as usual after availing the leaves. When he was issued pay slip in the month of June 2010 he was surprised to know that two days wages were cut from his wages. He immediately met Mr. I. S. Kang, Assistant General Manager on 16.07.2010 who advised him to meet him on the next day and next day he could not meet him. Then she met Mr. Surinder Gautam and

asked him about the illegal deduction of two days wages. He without any provocation started misbehaving with him. Mr. Gautam was annoyed with him and was in search of lame excuses to punish the workman and tried to get him transfer but he could not succeed. Earlier also Mr. Gautam was instrumental in getting 450/- cut from his wages and when he met the Assistant General Manager, who ordered Mr. Gautam for refund of ₹ 450/- and not to create unnecessary problems in the smooth running of the office. Without any justified reason Mr. Gautam allegedly made a complaint against the workman. The management without conducting any preliminary inquiry issued him memorandum No. Nil dated 14.08.2010 on the alleged charge of :—

- (i) He is guilty of attempting to beat his superior officer with his shoe in the office premises, which is a major misconduct on his part.
- (ii) He is guilty of using foul language against his superior officer in the office premises, which is major misconduct on his part.
- (iii) He is guilty of threatening his superior officer in the office premises, which is major misconduct on his part.
- (iv) He is guilty of acts of grave insubordination.
- (v) He is guilty of absenting from duty on 25.06.2010 and 26.06.2010, without getting the leave sanctioned.

Before issuing the charge sheet he was placed under suspension *vide* letter dated 17.07.2010. The letter was sent to him on the pretext that he refused to accept the letter which is otherwise wrong. The workman was charge sheet for one month of the alleged incident. Before submitting his reply to the alleged charges the workman demanded some documents which were very material and necessary for his defence and reply. The management did not supply him the demanded documents and hasten to go for an inquiry by appointing one Shri M. R. Dhiman as Inquiry Officer and Shri S. S. Lamba as Presenting Officer without waiting his reply. The workman deliberately not supplied the copies of the complaints of Shri Surinder Gautam, Shri Ashish Malhotra and Ms. Madhu Passi as there was no complaint against him. The workman was denied the assistance of Shri B. S. Saharwal, who is an office bearer of Courier Companies Worker Union. The management as well as the Inquiry Officer deliberately refused him permission for his assistance on the pretext that he is an outsider whereas Mr. Dhiman and Mr. Lamba both are outsiders. In the Model Standing Orders there is no provision that an outsider can be appointed as Inquiry Officer and Presenting Officer and it is nowhere mentioned that an office bearer can not be allowed to assist the charged official in the inquiry. As per Indian Trade Union Act, 25% outside persons can be appointed as office bearers of the union and also there is provision in the Model Standing Order that an office bearer of the choice of the charged official can assist the charge official in the inquiry. Both the management and the Inquiry Officer with ulterior motive concealed the above fact from the workman which has caused great prejudice to him. The whole inquiry is vitiated on this point. Mr. Dhiman is an Advocate and Mr. Lamba is a retired well qualified officer and always represents the management in the Conciliation proceedings and Labour Courts/Tribunals. Despite the order of the Inquiry Officer, the workman was not supplied the list of documents, name of witnesses and their alleged complaints, which is denial of fair opportunity. Mr. Gautam after recording of his statement met the other two witnesses and briefed them about the statement and cross-examination. There is no change of any word in their statement. The workman brought it in the notice of the Inquiry Officer but he did not take any action on it. No action has been taken on the complaint of the workman against Mr. Surinder Gautam. Mr. Gautam as well as the management has not denied the contents of his complaint. No other independent worker was called in the inquiry and no other persons who allegedly took him out side the room were called in the inquiry to ascertain the fact of the alleged charge/incident. The workman was not given any opportunity to produce any defence. The Inquiry was closed after recording the statements of management witnesses, which is denial of natural justice, equity and fair play. The Inquiry Officer was hand in gloves with the management and was working on the terms and dictation of the management. Action of the management in dismissal of service of the workman is illegal, wrongful, motivated, against the principles of natural justice and denial of proper opportunity to prove his innocence. Ultimately, it is prayed that the workman be reinstated with continuity of service and full back wages along all attending benefits with 18% compound interest.

3. The management contested the case of the workman and filed written statement that the termination of the workman is valid and his work was below average and he was warned and advised several times. The workman had applied for two days leave for 25.06.2010 and 26.06.2010 but admittedly he did not get it sanctioned, prior to availing the leave and he un-authorisedly proceeded on leave. The contention of the workman that Mr. Surinder Gautam - Assistant Manager misbehaved with him is without provocation and defies logic as it stood established in the domestic inquiry that it was the workman himself, who misbehaved with Mr. Gautam as he behaved in subordinate manner asking Mr. Gautam to pay him the wages of two days deducted because of his unauthorised leave and on showing inability to do so by Shri Surinder Gautam, he not only used foul language against him but also attempted to beat him with his shoe, which he took out and before he could hit Mr. Surinder Gautam with shoe, he was prevented by the another employee present there. He also threatened Mr. Gautam. The complaint of Shri Gautam regarding major misconducts committed by the workman was justified. After thoroughly examination of matter by the concerned authorities and after in depth scrutiny of facts, the workman was suspended, mainly in view of his violent behaviour. He was likely to cause violence if he was not suspended. The workman was intimated in writing to see the relevant record and take notes, before ordering the inquiry. He was given repeated opportunities to see the record and file his reply to the charge sheet but he even refused to accept the letter of extension of time span to file his reply which had to be sent to him at his residence so he wilfully did not file the reply. The complaint was given only by Shri Surinder Gautam. Shri Asish Malhotra and Ms. Madhu Passi had given their version of the occurrence in which the workman had tried to beat Mr. Gautam with shoe. The workman was given repeated opportunities to take the assistance of any worker in the inquiry proceedings as provided in Model Standing Orders notified by the Chandigarh Administration. The assistance of Shri B. S. Saharwal was not permitted by the Inquiry officer on the ground that he was outsider and not the worker/co-worker. Subsequently the workman himself had given written statement that he will defend himself in the inquiry proceedings. Shri M. R. Dhiman is not an Advocate. In fact he is General Secretary of Bhartiya Mazdoor Sangh Employee Union, which protects the rights of the workers. The inquiry was conducted keeping in view principles of natural justice and procedure. The workman had duly received the list of witnesses of the management and list of documents in the preliminary proceedings itself. The workman is cooking up false stories in desperate attempt to malign the management. The workman had filed number of applications during the inquiry proceedings which were duly considered and decided by the Inquiry Officer and had there been any truth in the allegations levelled then the workman would have mentioned the same in the applications given by him to the Inquiry Officer. The independent workers who were eyewitnesses had deposed in the inquiry proceedings. Circular / office order regarding availing of the leave was also produced in the inquiry proceedings. The workman was given three opportunities by the Inquiry Officer to produce his defence evidence. The claim referred pertains to the general demands like uniform etc. has no link with the major misconduct committed by the workman. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed rejoinder reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed:-

1. Whether the reference is not maintainable ? OPM
2. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. During the pendency of the present reference, learned representative for the management pleaded no instructions to pursue the present case as the company has been closed down so he withdraw his authority letter on behalf of the management. None appeared on behalf of the management as such it was proceeded against *ex parte*. In *ex parte* evidence, the workman examined himself as AW1. Learned representative for the workman closed the evidence.

6. I have heard learned representative for the workman and have gone through the file carefully. Learned representative for the workman examined the workman as AW1, who deposed that he was appointed by the management as Dak Messenger and remained in uninterrupted employment upto 15.11.2010 when his services were illegally & wrongly terminated. He further deposed that due to some urgent domestic affair, he applied for two days leaves i.e. for 25.06.2010 & 26.06.2010 as per prevailing practice to immediate authority/supervisor on 21.06.2010. Since he was never informed about alleged refusal of leave so he proceeded on leave. When he was issued pay slip for the month of June 2010 he came to know that two days wages were deducted from his wages. He immediately met Mr. I. S. Kang - Assistant General Manager who advice him to meet next day. As he could not meet next day with Mr. Kang so he met Mr. Surinder Gautam and asked about his illegal deduction and without any provocation Mr. Gautam misbehaved with him. He further deposed that Mr. Guatam was annoyed with him and searching lame accuses to punish him. Earlier also he cut ₹ 450/- from his wages and the Assistant General Manager ordered to refund ₹ 450/-. Mr. Surinder Gautam allegedly made complaint against him on the basis of which he was placed under suspension vide letter dated 17.07.2010 and issued a charge sheet. He demanded some documents for filing reply but the management did not supply the same and hasten to go for an inquiry by appointing one Shri M. R. Dhiman-Advocate as Inquiry Officer and Mr. S. S. Lamba as Presenting Officer without waiting his reply. He further deposed that he was deliberately not supplied the copies of the complaints of Shri Surinder Gautam, Shri Ashish Malhotra and Ms. Madhu Passi as there was no complaint against him and the same were procured from them later on. He was denied the assistance of Shri B. S. Saharwal, who is an Office Bearer of the Courier Companies Workers Union, on the ground that he is an outsider whereas Shri M. R. Dhiman - Advocate and Mr. S. S. Lamba both are outsider, which has caused prejudice to him. Despite the order of the Inquiry Officer he was not supplied the list of documents, name of witnesses and their alleged complaints. Mr. Surinder Gautam after recording his statement, met the other two witnesses and briefed them about the statement and cross-examination.

7. Learned representative for the workman has argued that the workman was appointed with the management as Dak Messenger and remained in uninterrupted employment upto 15.11.2010 when his services were illegally & wrongly terminated. The workman proceeded on two days after applying for the same in the month of June 2010 but when was issued pay slip for the month of June 2010 he came to know that two days were deducted from his wages. The workman meet Mr. Surinder Gautam and alleged him about illegal deduction upon which Mr. Gautam started misbehaving with the workman. Earlier also Mr. Gautam had made deduction from the wages. Without any justified reason Mr. Surinder Gautam made a complaint against the workman and without conducting any preliminary inquiry the charge sheet was issued to the workman. The workman was not supplied the documents to enable him file reply and without awaiting the reply Inquiry Officer and Presenting Officer was appointed. He argued that the workman was not provided the assistance of his representative who is office bearer of the Courier Companies Workers' Union whereas the Inquiry Officer and Presenting Officer appointed by the management are outsider. He further argued that no independent worker was called for inquiry. No circular regarding the procedure of availing leave was circulated. The inquiry was full of defect and was conducted without applying mind. It is further argued that application dated 11.01.2012 filed under Section 36 of the ID Act by the workman which is accepted and Shri S. S. Lamba was barred to be management's representative. The management approached the Hon'ble Punjab & Haryana High Court by way of writ petition which was dismissed by the Hon'ble High Court so the claim of the workman is genuine. He suffered lot of harassment. Action of the management be declared as illegal wrong, motivated and unjustified and he be reinstated with full wages and continuity of service along with 18% compound interest.

8. I have carefully considered the submission of learned representative for the workman. In the present case the management is *ex parte* and the workman is aggrieved that his services were terminated illegally by the management as inquiry conducted against him is not legal, valid and against the principles of natural justice. The workman had raised various objection with regard to non-supply of list of documents & witnesses, initiation of inquiry without awaiting reply to the charge sheet, non-conducting of preliminary inquiry,

non-providing of assistance of office bearer of the union, appointment of outsider as Presenting Officer and Inquiry Officer, conducting of inquiry in violation of Model Standing Orders, non-application of mind and violation of principles of natural justice by the Inquiry Officer and while etc. But it is the categorical stand of the management while filing written statement that the workman was given three opportunities to produce his defence statement. He was given opportunities to see the relevant record and take notes for filing reply to the charge sheet. List of witnesses and documents was duly supplied to him in preliminary proceedings dated 25.09.2010. Since the workman had failed to reply to the charge sheet even after extended period so the inquiry was ordered. The workman was allowed to take assistance of any worker as provided in Model Standing Orders notified by the Chandigarh administration and he opted to defend himself in writing. The independent witnesses deposed in the inquiry and he was give full opportunity to prove his innocence. The Inquiry Officer was a union leader and not advocate and the presenting officer was also not advocate. All the material was appreciated and considered and after application of mind the inquiry report was submitted on the basis of facts and keeping in view principles of natural justice.

9. Though the management is *ex parte* and no evidence has been led by the management to rebut the stand of the workman and to prove that the inquiry conducted against the workman is fair & proper management but it is for the workman to prove his case by standing on his own legs. The workman has placed on record only the documents relating to his appointment and letters written to the Inquiry Officer and reply to the show cause. No efforts has been made by the workman to summon the inquiry file or summon the Inquiry Officer to prove his stand that inquiry conducted against him is not fair & proper and he was not afforded full & fair opportunity during the inquiry proceedings. In the light of discussion, the workman has failed to prove that his services were terminated illegally by the management. Accordingly, this reference is declined and answered against the workman. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(ANSHUL BERRY),

The 25.11.2019.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 17th January, 2020

No. 13/1/9704-HII(2)-2020/1079.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 13/2015, dated 11.12.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between :

MADAN LAL S/O SHRI LAKH CHAND, HOUSE NO.224, GOBIND NAGAR, NAYA GAON, SAS NAGAR (MOHALI), PUNJAB. (Workman)

AND

1. SUB-DIVISIONAL ENGINEER, SUB-DIVISION NO. 9, PUBLIC HEALTH DEPARTMENT (WATER SUPPLY), UNION TERRITORY, CHANDIGARH.

2. EXECUTIVE ENGINEER, DIVISION NO.3, PUBLIC HEALTH DEPARTMENT (WATER SUPPLY), SECTOR 37-C, UNION TERRITORY, CHANDIGARH.

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<https://egazette.chd.gov.in>*

3. SUPERINTENDING ENGINEER, PUBLIC HEALTH DEPARTMENT (WATER SUPPLY), SECTOR 37-C, UNION TERRITORY, CHANDIGARH.

4. COMMISSIONER, MUNICIPAL CORPORATION, NEW DELUXE BUILDING, SECTOR 17, UNION TERRITORY, CHANDIGARH (Management)

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that on 06.03.2013 he was employed as Tube well Operator at pump set of tube well village Kajheri, situated near Government High School, Kajheri, Chandigarh by Sh. Sukhdev Singh—Supervisor of Public Health (Water Supply) Department, Union Territory Chandigarh. No appointment letter and no wages slip was issued to him during the service period. This tubewell was under the supervision of Sh. Gurcharan Singh—Junior Engineer, Sh. Suresh Gill—Sub Divisional Engineer and Mr. Dhawan—Executive Engineer, Division No. 9, Sector 37, Chandigarh. The workman was being paid a sum of Rs. 6,883/-per month by the water supply department. This payment was disbursed to him through a private contractor though he was appointed by the department of Public Health (water Supply), Union Territory Chandigarh. Since the supervisor who used to deliver me the cheque was collecting Rs.1,380/- per month without any receipt so the workman and other tube well operator made a complaint to Vigilance Department, Union Territory Chandigarh in June, 2013. There are more than 350 Pump Operators working with the department of Public Health (Water Supply), Union Territory, Chandigarh. The Vigilance Department, Union Territory Chandigarh made an enquiry in to the complainant and the supervisor was arrested by the Vigilance Department, Union Territory Chandigarh. The department is inimical to him on the pretext that he had exposed the illegal tactics being adopted by the department. The workman was not allowed to join his duty with effect from 10.07.2014 without any notice, charge sheet, or any reason. He was daily going to join his duty but he was not allowed to join his duties. The work & conduct of the workman remained satisfactory throughout his long service tenure. The workman is unemployed since the date of his termination. According to the provision of Labour Law the workman had worked continuously for more than 240 days in a calendar year and his services could not be terminated without complying with provisions of Section 25-F of the ID Act. Action of the management is also in violation of Section 25-G of the ID Act as at the time of termination of his services, juniors to the workman were retained in service. This action of the management amounts to unfair Labour practice as contained in Section 25-T of the ID Act read with point no. 10 of Schedule-V. Action of the management in removal of his services smacks *mala fide* and is an act of victimization and hostile discrimination *qua* the workman. The workman is a poor person and also the head of multimember family. The maintenances of his children have been paralysed due to illegal action and are facing all difficulties of unemployed person. Before terminating the services of the workman, no charge sheet was issued, no inquiry was held so verbal termination order passed by the management is wholly illegal and unjustified and against the established law. Job of the workman still exists in the department till date. Junior workman to the workman were retained in service so there is serious violation of Section 25-G as well as Section 25 F of the ID Act. Ultimately, it is prayed that the workman be reinstated with full back wages, continuity of service and all attending benefits with 18% compound interest.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the workman had not impleaded the contractor under whom he was working. The work related to operation and maintenance, watch and ward of tubewell and booster, pumping machinery and operation of chlorine dosing system in various sectors, colonies and Villages in Union Territory Chandigarh has been given to the contractor M/s Deepak Bindra, House No. 717/A Phase-XI, Mohali and the workman employed by the contractor. On merits, it is pleaded that the workman was not employed by Shri Sukhdev Singh – Supervisor. The workman was not the employee of Municipal Corporation, Chandigarh. The work of the tubewell was given to the contractor M/s Deepak Bindra and the Junior Engineer was merely supervising the work. The payment of the workman was being disbursed through the private contractor. The workman was employed by the contractor and he was paid salary by the said agency and no salary has ever been paid by the Municipal Corporation, Chandigarh. Since the workman was never employed by the answering management so there

was no question of issuance of any charge sheet or having removed the workman. On 06.07.2014 the workman was found absent from duty during his working hours by the Junior Engineer Incharge and the same was noted in the log book. One Shri Ram Naresh Sahu who did the duty in place of the workman informed the Junior Engineer, who was the supervisor, that the workman had tampered with the log Book and has run away. The contractor was informed of the said incident by the SDE *vide* his letter dated 10.07.2014. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether the claim of the workman is bad for non-joinder & mis-joinder of the parties ? OPM
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management failed to lead any evidence despite numerous opportunities as such the evidence of the management was closed by order.

6. I have heard the learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:—

ISSUE No. 1 &2:

7. Both these issues taken up together to avoid repetition of discussion and for the sake of convenience. In support of the case, learned representative for the workman has examined the workman as AW1, who deposed that on 06.03.2013 he was employed as Tubewell Operator at pump station at Tubewell Village Kajheri, situated near Government High School. No appointment letter and wages slips were issued to himself during the service. The tubewell was under the supervision of Shri Gurcharan Singh—Junior Engineer, Shri Suresh Gill – Sub-divisional Engineer and Shri Dhawan—Executive Engineer. He was paid sum of Rs. 6,883/- per month by the Water Supply Department. The payment was disbursed to him through private contractor and he was appointed directly by the Department of Public Health (Water Supply), Union Territory Chandigarh. The Supervisor, who used to deliver the cheque was collecting Rs.1,380/- per month without any receipt. He & other Tubewell Operator made a complaint jointly to the Vigilance Department in June 2013. The Vigilance Department made inquiry and the Supervisor was arrested by the Vigilance Department. He was not allowed to join on 10.07.2014 without any notice, charge sheet or reasons. The workman had worked continuously for more than 240 days in a calendar year so his services were terminated against the provisions of Section 25-F of the ID Act. Before terminating his services, he was not issued charge sheet, no inquiry was held and only verbal termination order was passed which is illegal.

8. Learned representative for the workman vehemently argued that he was appointed as Tubewell Operator. No appointment letter, no wage slip was issued during the service period. On his complaint the Supervisor was arrested so the department was inimical to him so he was not allowed to join duty on 10.07.2014. He further argued that the workman filed the application for summoning relevant record but the management had failed to produce the same before the Court so adverse inference be drawn against the management. He argued that the workman was employed with management No. 1 to 4 so the present industrial dispute is maintainable and the services of the workman were termination illegally by the management in violation of provisions of the ID Act and principles of natural justice. He relied upon authority **Ms Jogi Industries versus The Presiding Officer, Labour Court, Jullundur & Another, 1997 LLR 443 (P&H)** and prayed for reinstatement with continuity of service and full back wages.

9. On the other hand, the management failed to lead any evidence so evidence of the management was closed by order. However, learned representative for the management has argued that the workman had not impleaded proper and necessary party. In fact the contract has been given to M/s Deepak Bindra, who employed the workman. There is no employer-employee relationship between the management and the workman. He argued that as the workman was never employed so question of terminating his services does not arise. He prayed for dismissal of the industrial dispute.

10. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly the workman was Tubewell Operator at pump set at tubewell Village Kajheri situated near Government High School, Kajheri, Chandigarh. Though the workman alleging that he was appointed by the Junior Engineer of the Public Health Department, Union Territory Chandigarh but it is admitted case of the workman himself that he was paid sum of Rs. 6,883/- per month and payment was disbursed to him through the contractor through which he was appointed by the department of Public Health, Water Supply, Union Territory Chandigarh. Further this fact is also admitted by the workman while stepping into the witness box as AW1 that he was not given appointment letter by Public Health Department. He had given no complaint regarding the Municipal Corporation official in June 2013. He was employed by the contractor M/s Deepak Bindra, Mohali. Though he stated that he used to receive the wages of his work through cheque issued by the J.E. / S.D.O. but he did not know that under Union Territory Chandigarh Administration or Municipal Corporation which he was employed. Hence the worker himself is admitting that he was employed by the contractor M/s Deepak Bindra but the workman failed to implead the contractor in this industrial dispute which was very much necessary to decide the present claim of the workman. The workman has failed to prove the employer-employee relationship between management and himself as he was not appointed by the management. Hence no question of termination arises on the part of the management. So there is no need to give notice, charge sheet or compensation etc. to the workman by the management. The present claim of the workman is bad for non-joinder of necessary party as the workman was employed by the contractor. Since there is no relationship of employer-employee relationship between the management and workman issue No.1 has become redundant and authority relied upon by learned representative for the workman is not directly applicable to the facts of the present case.

RELIEF :

11. In the light of findings above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.). . . .,

(ANSHUL BERRY),

Dated: 11-12-2019.

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

CHANDIGARH ADMINISTRATION

LABOUR DEPARTMENT

Notification

The 7th January, 2020

No. 13/1/9698-HII(2)-2019/326.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL), dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 70/2016, dated 19.11.2019 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT, Chandigarh between:

SURJEET KUMAR VERMA, S/O SHRI DALIP KUMAR, R/O HOUSE NO. 2149, DHANAS, UNION TERRITORY, CHANDIGARH (Workman)

AND

1. VIEWPOINT ADVERTISING AGENCY, HAVING ITS OFFICE AT #57, SECTOR 18-A, CHANDIGARH-160018 THROUGH ITS PROPRIETOR RITU SACHDEVA.

2. RITU SACHDEVA-PROPRIETOR OF VIEWPOINT ADVERTISING AGENCY, HAVING ITS OFFICE AT #57, SECTOR 18-A, CHANDIGARH-160018 (Management).

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<https://egazette.chd.gov.in>*

AWARD

1. This award shall dispose off the industrial dispute received in this Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter called 'ID Act').

2. Case of the workman in brief is that he joined the management as Agent on 10.12.2013 on monthly salary of Rs. 20,000/-. The workman continued his service without any break and worked to entire satisfaction of the management and there was nothing adverse against him nor anything was ever conveyed to him by the management. He was working continuing peacefully but all of sudden on 18.02.2015 the management retrenched the his services without giving any specific reason or any prior notice/intimation to him which is in violation of the provisions of the ID Act. At the time of retrenchment of his services, the management had not issued any show cause notice to the workman. Aggrieved with the illegal action of the management, he had filed a complaint against management No. 2, Proprietor of management No.1, before the Labour Inspector Grade Circle-I, Sector 30, Chandigarh against the termination of his services, which was received on 20.02.2015 and the case was fixed for 10.03.2015. On 19.03.2015, one of the representative of the management namely Shri Narinder Kumar appeared and stated that the management intends to reach a settlement with the workman and on his assurance, the Labour Inspector fixed the next date and on the next date none appeared on behalf of the management to attend the proceedings of the Court so the case was adjourned. Thereafter again none appeared on behalf of management to attending the proceedings despite notice so the Labour Inspector advised the workman to file demand notice before him. He had completed more than 240 days from 10.12.2013 to 18.02.2015 and also completed near about two years of his service and cannot be verbally retrenched from his service by the management. No notice or pay in lieu of notice as well as retrenchment compensation was not paid to the workman. Termination of the services of the workman is also in violation of Section 25-H of the ID Act. Action of the management to retrench the services of the workman verbally is against all the norms of law, natural justice, fair play and equity. Action of the management had made the workman insecure in the wake of his livelihood and caused him immense mental agony stress and harassment. The management had not cleared all the legal dues of the workman and further not cleared the reasons for illegally and unlawfully terminating his services without any intimation. The management had given responsibility of representative of empanelment with Central University Himachal Pradesh, Dharamshala to the workman and the management had also authorised to take his own decision on behalf of management. The workman had approached and requested the management time and again to allow him to continue his service but all in vain. The workman is presently unemployed after his illegal termination by the management. The workman had earlier filed a demand notice on 21.12.2015 before the Assistant Labour Commissioner-cum-Conciliation Officer, which served on the management. As no amicable settlement could be made so the Assistant Labour Commissioner advised him to refer Section 2-A of the Industrial Disputes (Amendment) Act, 2010. Ultimately, it is prayed that claim of the workman be allowed and the workman be reinstated with continuity of service and full back wages along with interest at the rate 12% per annum.

3. The management contested the case of the workman and filed written statement raising preliminary objection that the present reference is not maintainable as the workman was working as an Agent and an Agent does not come under the definition of the 'workman'. The workman was getting salary of Rs. 20,000/-per month so the workman, who is having a salary of Rs. 20,000/- does not come under the definition of the 'workman'. On merits, it is pleaded that neither the workman had worked without break nor had worked to the entire satisfaction of the answering management. The workman neither improved his work nor got any work which is his primary duty being the marketing Agent so he has no right to remain on the rolls of the answering management. The management reviewed the performance of the workman on 09.01.2015 and informed the workman through Whatsapp group discussion that his performance is zero as he could not bring any business for the company so his services are not required and after one month on 18.02.2015 the workman was paid complete upto date salary through cheque to the tune of Rs. 12,857/- upto the date of relieving which was accepted by the workman without any protest whatsoever of any type and later on that cheque was also got encashed. The complaint filed by the workman before the Labour Inspector in view of the detailed reply filed as well as the submissions made, the complaint was

not maintainable. As and when the management was called by the Labour Inspector, the management always made it sure that they reach before the concerned authority and replied the queries with truthfulness. All the legal dues of the workman were paid in time and nothing is due towards the management. Work of empanelment with Central University, Dharamshala (H.P.) was not completed by the workman. Other averments of the case of the workman were denied and ultimately, it is prayed that the claim of the workman be dismissed.

4. The workman filed replication reiterating the averments of his case and denied the averments made in written statement. From the pleadings of the parties, following issues were framed by the then Presiding Officer:—

1. Whether Shri Surjeet Kumar Verma is not a 'workman' as defined under Section 2(s) of the ID Act ? OPM
2. Whether the services of Shri Surjeet Kumar Verma were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
3. Relief.

5. In support of the case, the workman stepped into the witness box as AW1. Learned representative for the workman closed the evidence. On the other hand, the management examined Ms. Ritu Sachdeva—Proprietor as MW1. Learned representative for the management closed the evidence.

6. I have heard learned representatives for the parties and have gone through the file carefully. My findings on the issues framed in this case are as follows:—

ISSUE No. 1:

7. Onus to prove this issue was on the management and to discharge the same the management has examined Ms. Ritu Sachdeva as MW1, deposed that the workman was working as an Agent and as Agent does not come under the definition of the 'workman'. As the workman does not come under the definition of the 'workman' so the present reference before this Tribunal is not maintainable.

8. Learned representative for the management has argued that since the workman was working as Agent with the management so he does not fall under the definition of the 'workman' as defined under Section 2(s) of the ID Act. He prayed for dismissal of the present industrial dispute on this ground only.

9. On the other, learned representative for the workman has examined the workman as AW1, who deposed that the workman had joined the management as a Client Service Manager and continued the service without any break.

10. Learned representative for the workman has argued that Shri Surjeet Kumar Verma is covered under the definition of 'workman' as defined under Section 2(s) of the ID Act as he was not having any managerial power so this issue be decided against the management.

11. After giving my careful consideration to the rival contentions of both the sides, I find that admittedly Shri Surjit Kumar Verma was working with the management and he was appointed as Client Service Manager. Let us peruse the definition of the workman:—

"2(s) 'workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical operational, clerical thousand rupees] per mensem or exercises, either by or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or

whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison ; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature].”*

Diverting to the present case, it is stated by the workman during his cross-examination that he was appointed as Client Servicing manager and no employee was working under him. He was not given any appointment letter by the management. By simply stating that the workman was an Agent, without any documentary proof with regard to nature of his duties and work of the workman, does not inspire any confidence. The management has not placed on record any document in which duties and nature of work of Shri Surjeet Kumar Verma has been mentioned. No appointment letter is placed on record to prove that Shri Surjeet Kumar Verma is not a ‘workman’ as defined under Section 2(s) of the ID Act. Reliance is placed on authority **Anand Regional Coop. Oil Seedsgrowers’ Union Limited Versus Shaileshkumar Harshadbhai Shah, 2006 SCC (L&S) 1486** wherein Hon’ble Supreme Court of India has held that primary duties performed by an employee are more important to ascertain whether he is a ‘workman’ or not and the designation of the employee or the name assigned to his class should not be given undue important and mere existence of subordinates whose work is required to be supervised is a *sine qua* non to prove supervisory work and the employee must have authority to initiate departmental proceedings against the sub-ordinates. Accordingly, this issue is decided against the management and in favour of the workman.

ISSUE NO. 2 :

12. Onus to prove this issue was on the workman and to discharge learned representative for the workman has examined the workman as AW1, who deposed that he joined the management as Client Service Manager on 10.12.2013 on monthly salary of Rs. 20,000/- and he continued his work without any break and to the entire satisfaction of his superiors and all of sudden on 18.02.2015 the management retrenched his services without giving any specific reason or prior intimation. He had completed more than 240 days from 10.12.2013 to 18.02.2015 and also completed near about two years of service. No notice or pay in lieu of notice as well as retrenchment compensation was paid.

13. Learned representative for the workman has argued that the workman had continuously worked with the management 10.12.2013 to 18.02.2015 and had worked more than 240 days with the management so his services cannot be verbally retrenched. Termination of the workman is in violation of Section 25-F of the ID Act and against the norms of law and principles of natural justice so the workman be reinstated with continuity of service and full back wages. He prayed for allowing of the present industrial dispute.

14. On the other hand, learned representative for the management examined as MW1, who deposed that the workman had not completed 240 days of regular service. Work & conduct of the workman was not satisfactory and he was not working properly and in efficient manner despite being given number of opportunities. Work of the workman was reviewed as per performance and he was informed through whatsapp group discussion that his performance is zero and he could not bring any business for the company so services are not required. The workman had received the cheque of Rs. 12,857/- without any protest and en-cashed the same so the present reference is not maintainable.

15. Learned representative for the management has argued that work & conduct of the workman was not satisfactory and unable to improve his working. He failed to procure any business for the management which was his primary duties. The workman was paid complete upto date salary through cheque and the same was accepted by him without any protest and the cheque has been en-cashed by the workman. He prayed for dismissal of the present industrial dispute.

16. After giving my carefully consideration to the rival contentions of both the sides, I find that admittedly the workman was working with the management and he continued his service from 10.12.2013 to 18.02.2015. From the perusal of the cross-examination of AW1 and MW1 it is clearly transpired that mere admission by the workman that he has been informed on whatsapp group with regard to his work is not sufficient to terminate his services rather proper inquiry is to be conducted as the workman regular employee of the management as admitted by the management. MW1 Ritu Sachdeva during his cross-examination that the workman was permanent employee. She also admitted that she has not placed on record the screen shot of whatsapp message and it is correct that no termination letter was served upon in physical form i.e. on paper along with seal and signature. It is correct that in her whatsapp message she has not mentioned the word 'termination' specifically but she has mentioned that 'your services are not required'. It is correct that the workman was drawing the salary and he was salaried employee. It is correct that she did not serve any notice prior to whatsapp message.

17. In the light of discussion made above, it is proved on record that that the workman had worked with the management more than 240 days. No proper notice was served and no inquiry was held against the workman before terminating his services. So the services of the workman were terminated illegally by the management in violation of provisions of Section 25-F of the ID Act and principles of natural justice. Accordingly, this issue is decided in favour of the workman and against the management.

RELIEF:

18. In the light of findings on the issues above, this industrial dispute is allowed. The workman is entitled for reinstatement with continuity of service and 25% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.). . . .,

(ANSHUL BERRY),

PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No.PB0095.

Dated: 19-12-2019.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Hardeep Singh, s/o Sh. Shamsher Singh, r/o # 148, Sector 41-B, Village Buterla, Chandigarh, have changed my minor daughter's name from Eshman Kaur to Haarvi.

[106—1]

I, Radha Rani, w/o Ghanshyam, r/o # 2128, Phase-II, Ramdarbar, Chandigarh, have changed my name to Radha.

[107—1]

I, Neku Ram, s/o Jit Bahadur, r/o 712, Sector 38-A, Chandigarh, have changed my name to Neeku Ram.

[108—1]

I, Hemant Kumar Shandilya, s/o Sh. Gupt Dev Sharma, Resident H. No. 213, Sector 46-A, Chandigarh, have changed my minor daughter's name from Divena to Divena Shandilya.

[109—1]

I, Hemant Kumar Shandilya, s/o Sh. Gupt Dev Sharma, Resident H. No. 213, Sector 46-A, Chandigarh, have changed my minor daughter's name from Sianna/Sianna Sharma to Siyana Shandilya.

[110—1]

I, Bindu Bala Sharma, w/o Hemant Kumar Shandilya, Resident H. No. 213, Sector 46-A, Chandigarh, have changed my name from Bindu Bala/Bindu Bala Sharma to Bindu Shandilya.

[111—1]

I, Hemant Kumar Sharma, s/o Sh. Gupt Dev Sharma, Resident H. No. 213, Sector 46-A, Chandigarh, have changed my name from Hemant Kumar Sharma to Hemant Kumar Shandilya.

[112—1]

I, Digamber Singh Negi, s/o Gambhir Singh Negi, r/o H. No. 525, Sector 52, Kajheri, Sector 52, Chandigarh, Declare That I have changed name of my son from Mayank Negi to Mayank Singh Negi.

[113—1]

I, Shalu Dhiman, w/o Sanjay Dhiman, r/o # 511/A, Maloya, Chandigarh, have changed my name to Saroj.

[114—1]

I, Rajpal Bidla, s/o Bhartu Ram, r/o 2398, Sector 28-C, Chandigarh, have changed my name to Raj Pal

[115—1]

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